

REMARKS

New claims 33-65 are pending in this application. Claims 1-32 have been canceled without prejudice to or disclaimer of the underlying subject matter.

In view of the foregoing amendments and following remarks, Applicants respectfully request the Examiner to reconsider and withdraw all outstanding grounds of rejection. Applicants respectfully request allowance of the application.

On pages 2-4 of the Office Action, claim 28 stands rejected under 35 U.S.C. § 101. On page 4, claims 11 and 12 stand rejected under 35 U.S.C. § 112, second paragraph. Applicants have canceled claims 1-32. Thus, the § 101 and § 112 rejections are moot. New claims 33-65 are in compliance with § 101 and § 112.

Claims 1-3, 7-19 and 21-32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Publication No. 2002/0083003 to Halliday et al. (hereafter, *Halliday*). Claims 4-6 and 20 stand rejected under 35 U.S.C. § 103(a) as being rendered obvious over *Halliday* and subject matter deemed obvious by the Examiner. Claims 1-32 have been canceled. Therefore, the rejections with respect to claims 1-32 are moot. Applicants have added new claims 33-65. Applicants submit that new claims 33-65 are in condition for allowance over the applied art for at least the following reasons.

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 Fed. Cir. 1987).

Halliday does not anticipate the claimed invention because *Halliday* does not disclose or suggest all of the claimed features. *Halliday* discloses a metering server for collating tool usage information and applying this collated information in the form of credit deductions from client users' credit pool, and a metering monitor for receiving and batching tool usage information from running tools for secure firewall-transparent communication to the metering server. The metering monitor relays commands and information to running applications and also monitors the state of tools and reports failures and completions to the metering server. *See, e.g., Halliday*, ¶¶ 51-52 and Figures 1, 3, and 4.

However, *Halliday* does not disclose or suggest a software pay-per-use (PPU) system including a metrics gathering tool, a software metering agent, a utility metering appliance, and a usage collection and billing system, as claimed. The metrics gathering tool, for monitoring and measuring usage data, is associated with each of the one or more PPU software products on a first computer. The software metering agent collects the measured

usage data from each metrics gathering tool and for all of the one or more PPU software products registered with the software metering agent on the first computer. The utility metering appliance is connected to a plurality of computers, including a first computer, through a network. The utility metering appliance receives the collected usage data from the software metering agent residing on the first computer and other software metering agents residing on other computers connected to the utility metering appliance through the network. The usage collection and billing system periodically receives the collected usage data from the utility metering appliance and processes the collected usage data to generate billing information for PPU software products on the plurality of computers connected to the utility metering appliance through the network. These features are claimed in independent claim 33.

As described above, *Halliday* does not disclose or suggest all of these claimed features. The claimed features are neither inherent nor obvious in view of *Halliday*. Therefore, Applicants submit that independent claim 33 is in condition for allowance over the applied art.

With respect to independent claim 52, *Halliday* does not disclose or suggest a computer implemented method for generating a bill for using a PPU software program including, at least, collecting usage data for all of the one or more PPU software products registered with the software metering agent on the first computer and receiving the collected usage data, at a utility metering appliance, from the software metering agent residing on the first computer and from a plurality of other software metering agents residing on a plurality of computers, as claimed. Independent claim 59 is directed to computer readable storage medium containing instructions implementing features recited in independent claim 52. Therefore, Applicants respectfully submit that independent claims 52 and 59 are in condition for allowance over the applied art.

Claims 34-51 depend from independent claim 33, claims 53-58 depend from independent claim 52 and claims 60-65 depend from independent claim 59. Therefore, claims 34-51, 53-58 and 60-65 are in condition for allowance for at least the reasons stated above and for the independently patentable features they recite.

CONCLUSION

In view of the above amendments and remarks, Applicants believe that all of the objections and rejections against this application have been fully addressed and that the application is now in condition for allowance. Therefore, withdrawal of the outstanding objections and rejections and a notice of allowance for the application are respectfully requested.

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to Hewlett-Packard Development Company's deposit account no. 08-2025.

If the Examiner believes that a personal or telephonic interview would be of value in expediting the prosecution of this application, the Examiner is hereby invited to telephone the undersigned counsel to arrange for such a conference.

Respectfully submitted,



Date: March 22, 2006

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